

SMARA UPDATE



The Quarterly Newsletter of the Department of Conservation - Office of Mine Reclamation

SMGB Issues Second 45-Day Notice to El Dorado County

An article in the Winter 1999 issue of *SMARA Update* noted that at the State Mining and Geology Board's January 14, 1999, business meeting, the board determined to issue a 45-Day Notice to Correct Deficiencies relating to the Surface Mining and Reclamation Act to the County of El Dorado. The determination was made pursuant to the provisions contained in Public Resources Code (PRC) §2774.4(c) of SMARA. The action by the board followed complaints by neighbors of some of the mines and the receipt of information and numerous documents over a 14-month period from the Department

of Conservation (DOC), residents of the county, and the county's staff.

On February 12, 1999, the board officially issued the 45-day notice to the county. In the notice, the county was informed that the board had identified deficiencies with nine of the surface mines under the county's lead agency jurisdiction. These deficiencies included the county's failure to enforce the provisions of SMARA.

Since that time, much has occurred regarding the State Mining and Geology Board/El Dorado County situation, with the board recently issuing a second 45-day notice.

On March 29, 1999, the county responded to the board's first notice. In their response, the county concluded that no deficiencies existed for any of the surface mines listed in the board's notice, and that no corrective actions were necessary.

A report reviewing the issues of the 45-day notice was prepared by the board staff on May 1, 1999, in preparation for the board's regularly scheduled May 13 meeting. However, on April 30, 1999, the board lost its quorum, and did not again have a quorum

AB 297 and Adaptive River Management on Cache Creek

A 1976 Yolo County environmental study set the first block in building a foundation for new management techniques to be implemented on Cache Creek in Y2K. In a nutshell, the study concluded that the bed of Cache Creek had lowered 20 feet in dynamic response to gravel mining. A more recent study put it a different way: left alone, it would take over 500 years for the creek to recover to the condition it was in 40 years ago. A quarter of a century later, after a dozen major environmental studies, ballot measures put to the voters, legislative initiatives and a SMARA amendment, things may soon change for Cache Creek.

Assembly Bill 297, authored by Assemblywoman Helen Thomson (D-Davis), was approved by Governor Davis on October 8, 1999. This amendment will help Yolo County implement a state-of-the-science creek maintenance/restoration plan in a 4,956-acre special management corridor along Cache Creek. And instead of reclamation plans for each individual project, AB 297 amends SMARA to

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SMGB Issues Second 45-Day Notice to El Dorado County

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until late in October 1999. The May 1 edition of the board's staff report, and its subsequent updates, were not released pending the board having a quorum. The board's staff report was updated on August 1 to reflect the July 1 filings of annual reports by the mines under consideration, and again on September 1, 1999, to reflect approval by the county of financial assurances for the Timm Mine.

At the board's regularly scheduled November 10, 1999, meeting, it was announced that the board's formal review of the county's response to the 45-day notice would be placed on the board's agenda for consideration at its regularly scheduled December 7 meeting. The board's staff report was released to board members on that date, and to the general public and interested parties immediately following.

On November 29, 1999, El Dorado County notified the board office that it had filed a Writ of Mandate in the Sacramento Superior Court to prevent the board's review of the county's March 29 response at the upcoming December 7 board meeting. The basis for the county's actions was its allegations of unfair bias of the board's chairman. The court, receiving the matter on November 30, ordered a temporary stay in the board's December 7 scheduled review of the county's response until it had time to review the county's

submittals. On January 7, 2000, the Superior Court denied the county's petitions, allowing the board to continue its review process.

The board found at its January 13, 2000, meeting that only one mine (Cassill Mine) was not deficient at the time the 45-day notice was issued. The board also found that of the remaining eight mines, the county had not corrected deficiencies within the 45 days as provided for in statute; however, subsequent to the end of the 45-day period and before the board's January 13 meeting, three of those mines (Cool Cave Quarry, Timm Mine, and Chile Bar Mine) had resolved the noticed deficiencies. The board found that the deficiencies cited for these three mines had been mitigated to the board's satisfaction.

Deficiencies cited in the 45-day notice for the remaining five surface mines (Weber Creek Quarry, Diamond Quarry, Eureka Slate Mine, Snows Road Pit, and Garden Valley Aggregates) had not been resolved to the board's satisfaction. Therefore, the board ordered the issuance of a second 45-day notice to the county to hold a hearing in the county to consider board assumption of any of the county's SMARA powers. The hearing date has been set for March 9, 2000, beginning at 9:30 a.m. at the Best Western Placerville Inn, 6850 Greenleaf Drive, Placerville, CA. A copy of the meeting agenda may be obtained ten days prior to the hearing by calling the board office at (916) 322-1082, or by E-mail at smgb@consrv.ca.gov.

Upcoming Workshops

The Office of Mine Reclamation has scheduled an ambitious series of nine workshops for the 2000 calendar year. These workshops have become a popular aspect of our outreach efforts and attendance at them continues to grow. We kicked off this year's schedule by holding two, half-day workshops on exemptions and compliance in February (at the time of this writing, both classes were booked at over 30 participants each!) In March, we will conduct a SMARA overview workshop (one of our most popular training sessions) and in April we will introduce a new workshop covering SMARA's administrative appeals process. This new workshop is sure to appeal to both operators and consultants and will be presented in coordination with staff from the State Mining and Geology Board.

In response to a request to hold the mine safety workshop earlier this year, we have scheduled it for June. We hope to conduct another inspection workshop shortly thereafter but have not found a sponsor for the field trip portion of this training. Any operator willing to volunteer a site for this year's inspection workshop is asked to contact this office. Concluding this year's workshop series will be a session on reclamation plan review which will be held in late October.

Firm dates and locations for the next two series of workshops are:

SMARA Overview:
March 17, Sacramento

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AB 297 and Adaptive River Management on Cache Creek

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allow site specific plans meeting Article 9 minimum standards to be prepared that follow the guidelines of the Cache Creek Resources Management Plan (CCRMP) and Cache Creek Improvement Program (CCIP); documents prepared by experts in river environments.

Aggregate production in Cache Creek will no longer be the prime objective of the landholders along the management corridor, at least not within the corridor itself, and not within a 200 to 700-foot setback from the creek banks. The fair sister to the CCRMP, Yolo County's Off-Channel Management Plan (OCMP), designates 23,174 acres for commercial aggregate production located on either side of the corridor. The next 20 years' worth of commercial aggregate production will be from deep mining aggregate on 2,123 acres within the OCMP area.

The CCRMP and CCIP define a template that will be used to reshape Cache Creek into a river with dynamic equilibrium, that can provide fish and wildlife habitat, recreational opportunities and sediment and flood conveyance. The template is predicated on mathematical model simulations. The current creek morphology was plugged into the model, which revealed places where irregularities in the channel caused both backwater and high velocity areas to occur which result in flooding, sedimentation, and erosion

hazards.

The model was then used to evaluate the ideal channel geometry and develop the template. The actual condition of the channel from year to year will be compared to the template to determine where and when sand and gravel will be excavated from the channel. The channel dimensions will be mapped each year using photogrammetry, which is a survey technology that covers broad areas with good accuracy. Where deposition clogs the ideal channel, it will be excavated under the corridor plan...a classic application of adaptive management techniques.

A second provision of AB 297 is for DOC to convene a task force to study the implementation of the special management corridor plan, and possible applications to other, similar, channel maintenance/restoration schemes. Where the task force reaches consensus on application of the CCRMP, changes to SMARA will be drafted and recommended to the Secretary of the Resources Agency, Mary Nichols, that would allow for similar management techniques to be applied elsewhere in California.

The provisions of AB 297 will sunset on December 31, 2003,



unless extended legislatively.

March 29, Alhambra

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Upcoming Workshops

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SMARA Administrative Appeals Process:

April 19, Sacramento

April 27, Riverside

Flyers will be mailed announcing the specific location and time of these workshops as their dates approach. Exact dates and locations for the remaining workshops will be announced in a future *SMARA Update*.

DOC Gets More \$\$\$ in Governor's Budget

With the days of \$14 billion dollar budget deficits well behind us, and an emphasis from Governor Davis on environmental protection and resource conservation, the Department of Conservation did well in the first phase of the annual budget process. The budget unveiled by the governor on January 10, 2000, included a total increase to the DOC budget of \$35,211,000, a 7.5 percent increase over this year's budget. This is largely due to Senate Bill 332, which greatly expands the state's beverage container recycling program. The proposed budget adds 110.6 positions: 25.6 in the Division of Mines and Geology; 5 in the

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Message from the Director



When Governor Davis asked me to take the helm of the Department of Conservation, I saw it as an exciting opportunity to help steer a diverse set of programs that affect California's people and economy every day.

Leadership at this department is a bit like herding cats in that every program has its own mission, often independent of the others. But there is one thing that ties together the various entities within the department, and that one thing is land: its use, its conservation, its rehabilitation.

Mining may not have much in common with recycling, but somebody had to produce the bauxite ore that was turned into an aluminum can. And somebody at the other end of the line is going to recycle that can, conserving ore for future use and saving energy and landfill space. Between those two disparate activities lies a balance between today's needs and tomorrow's obligations.

My vision for the Department of Conservation is that we will strike a balance between economic and environmental

needs through cooperation, responsiveness, and fairness. I'll define them as follows:

- Cooperation is the means by which we will create the best possible outcome for any given situation.
- Responsiveness is our commitment to provide answers to questions and requests for information in a timely manner, if possible within 24 hours.
- Fairness is our assurance that when problems, disputes or other issues arise, we will approach them with objectivity and consistency.

I want us to pleasantly surprise the people we deal with. We will do everything possible to avoid the "bureaucrat" stereotype. The easiest problem to solve is the one that is addressed before it becomes an issue.

At the same time, I cannot understate our commitment to the duties we've been given. This includes ensuring the Surface Mining and Reclamation Act is adhered to throughout California. While the value of mining to the state is indisputable, so too is the responsibility to safeguard and rehabilitate the environment.

Again, balance is the goal. I look forward to working with the mining community and local lead agencies to achieve it.

What's Going On

Editor's Note: Various educational conferences and workshops related to mining and mine reclamation occur in California throughout the year. In future editions of the SMARA Update we will list upcoming conferences/workshops that we are aware of in this column.

Cal/OSHA

Mine Safety & Health Conference
March 8-9, 2000
Holiday Inn, Sacramento
Cost: Free
Information: (530) 895-6938

Northern California Society for
Environmental Toxicology and
Chemistry
10th Annual Meeting - "Protecting
California's Environment -
Reactive to Proactive"
April 9-10, 2000
University of California, Davis
Cost: ?
Information: (530) 752-2534

Integrated Mining and Land
Reclamation Planning Workshop
April 10-14, 2000
The Flamingo Hilton, Reno, NV
Cost: \$395
Information: (925) 757-7547

Constructed Wetland/Watershed
Management Course
May 15-19, 2000
Cost: ?
Information: Bob Gearheart,
rag2@axe.humboldt.edu

Executive Officer's Report

At its December 7, 1999, regular business meeting held in Folsom, the State Mining and Geology Board took the following actions on these SMARA issues:

1. The board certified new SMARA ordinances for the lead agencies of: City of Lompoc, City of Anaheim, County of Sonoma, and County of Marin. These new certifications are the result of the board's program to encourage lead agencies with pre-1991 ordinances to bring their ordinances into accordance with current SMARA.

2. The board accepted the Division of Mines and Geology Open File Report 99-08, Mineral Land Classification of Merced County, California, as being prepared in accordance with the Mineral Classification and Designation Guidelines of the board.

3. The board approved the final draft of the *1998-1999 Annual Report* to the governor and the legislature. [Copies of this published report may be ordered from the board by writing to the board's office at: State Mining and Geology Board, 801 K Street, MS 24-05, Sacramento, California, 95814; or by facsimile at: (916) 445-0738. The board is accepting only written or facsimile requests].

At its January 13, 2000, regular business meeting held in Folsom, the board took the following actions on these SMARA issues:

1. The board certified new SMARA ordinances for the lead agencies of: City of Azusa, County of Modoc, and County of Yuba. These new certifications are the result of the board's program to encourage lead agencies with pre-1991 ordinances to bring their ordinances into accordance with current SMARA.

2. The board approved the Mineral Land Designation Analysis prepared by the Division of Mines and Geology which recommended the removal of designation status for specific mineral resources in Fresno County. This recommendation was based on the findings of Open File Report 99-02, that showed the mineral resources earlier designated by the board as having a regional significance to be exhausted following years of mining activity.

3. Following a four and one-half hour hearing, the board concluded that El Dorado County's response to the board's 45-Day Notice to Correct Deficiencies was not satisfactory. The board determined to issue a second 45-day notice to the county, pursuant to the requirements of PRC §2774.4(c), to hold a hearing in the county to consider board assumption of any of the county's SMARA powers. The hearing date has been set for March 9, 2000.

*John Parrish, Ph.D.
Executive Officer*

DOC Gets More \$\$\$ in Governor's Budget

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Division of Land Resources Protection; 6 in the Division of Administration; and 74 in the Division of Recycling.

For the Office of Mine Reclamation, the proposed budget is good news for three reasons:

- 1) It contains funding for a new position dedicated to financial assurance cost estimate review, an area of SMARA oversight for which, up to this point, the department has not been funded.
- 2) It extends the current Abandoned Mine Lands program at its current funding level for two years. Funding was slated to drop by 40 percent beginning July 1, 2000.
- 3) It contains one-time funding for the in-stream mining regional reclamation plan task force established by Senate Bill 297 (see article in this issue on SB 297).

Legislative budget committee hearings will commence in March. Any of the above items may be deleted, increased, or otherwise changed as the DOC's budget is scrutinized by the legislature. Hopefully, like last year, the budget will be approved and in place by July 1. We'll keep you posted.

*Glenn Stober,
Assistant Director*

Waffles are for Breakfast, Not Reclamation Plans

What you are about to read is fictitious, or is it? How would you, as a SMARA lead agency, review this plan? Can you use the information provided for compliance monitoring or in the calculation of financial assurances? And, if not, why not?

"The reclamation plan will strive to adhere to the applicable Article 9 standards for slope stability, erosion control, and revegetation. Slopes will be engineered according to acceptable geotechnical practice. Slopes will be backfilled and/or benched to achieve the final slope configuration. The slopes will be properly designed to attain a factor of safety adequate for the end use. Off-site erosion and sedimentation are not expected; however, erosion control facilities will be installed where needed prior to the onset of the rainy season. The facilities will be sized and maintained to ensure the maximum retention of sediment within the site. The site does not intercept surface flows although several dry washes are located to the east and west of the site. If needed, surface flows will be diverted around the excavation.

The site is located in the desert. The site is rocky with many large boulders. All material on site can be utilized as product. There is no topsoil and topsoil salvage is not proposed. Vegetation is very sparse and

typical of the desert. No sensitive species are known from the site and no impacts are anticipated. If sensitive species are found, impacts will be mitigated to the fullest extent possible in accordance with applicable state and federal laws. Due to the sparse vegetation, no revegetation is planned for this site. We anticipate that the site will naturally revegetate in a timely manner following winter rains.

The mine will be left in a clean and safe condition. No mining equipment or product stockpiles will be left on site. Roads will be reclaimed unless necessary for the end use. Mining will exhaust the available product. Due to its remote location, public access will not be a problem. Reclamation will occur where feasible but only if practicable to implement. It will be undertaken as soon as possible after mining ceases in an area. When complete, the site will be readily adaptable to an alternative use that will minimize potential impacts to human health and safety and will not cause long-term impacts to the environment. Reclamation will be monitored for an appropriate period of time to ensure bond release. Financial assurance calculations will be forwarded."

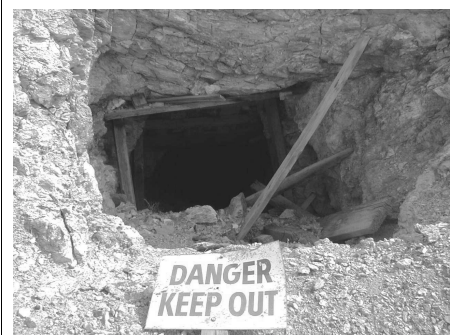
The above reclamation description is fictitious, but this example has been compiled from language in **real** reclamation plans. The example points out the problems with "waffle" words – words that can be interpreted in more than one way, that do not provide site-specific information, and cannot be used to develop performance standards. Reclamation plans should answer

the classic questions of who, what, when, where, why, and how. Performance standards and bond release are based on **measurable** information – the slope angle, the capacity of a sediment retention basin, the percent cover of vegetation – and such information should be provided in the plan. A plan containing vague or generalized statements cannot be monitored and should not be approved.

So how many waffle words or statements did you detect? If you found more than 20, you get a gold star!

*Mary Ann Showers,
Environmental Specialist*

It is estimated that there may be more than 30,000 abandoned and inactive mine locations in the state. If you know of or find an abandoned mine, please call and report it to the Abandoned Mine Lands Unit. The toll free number for reporting an abandoned mine is:



1-877-OLD MINE
**Remember to stay out
and stay alive!**

Financial Assurance Tips



Editor's Note: Information in this article was taken from The Law of Letters of Credit by John F. Dolan, published by A. S. Pratt & Sons Group, 1999.

Performance Bond vs. Standby Credit, Distinguishing the Difference

As amended, SMARA allows financial assurances to take the form of either corporate surety bonds, irrevocable standby letters of credit or trust funds (i.e. cash or cash certain financial mechanisms). By far the most popular mechanism used by operators to fulfill their financial assurance obligation is the surety bond with standby credits being a distant second. Because these two types of mechanisms represent the majority of financial assurance guaranteeing mined land reclamation in California, it is important to understand a notable difference between the two.

Traditionally, corporate surety bonds are triggered by factual determinations. That is, before issuing payment for the default (failure to reclaim) of a principal (operator) on a bond, a surety company will make a factual determination that the principal has actually defaulted. For the obligee (lead agency), this may mean having to litigate with the surety to prove the principal has defaulted. And once the principal's default has been established, some surety companies may try to

complete reclamation by hiring a third party to conduct the work.

Irrevocable standby letters of credit, on the other hand, are triggered by a bank's examination of documents. As long as the documents presented by the obligee meet the requirements of the credit, the bank is obligated to honor that credit. Banks are not concerned with the factual determination of an operator's default, nor do they involve themselves in the business of reclamation.

The point of this discussion is that in surety contract situations, lead agencies should be aware that there may be a lengthy and costly determination of the operator's default and that the lead agency bears most of the cost of the delay in performance. In standby credit cases, however, lead agencies avoid potential up front litigation and receive prompt payment upon presentation of the required documents.

*Andrew Rush,
Environmental Specialist*

Special Notice!!!

The deadline to update existing surety bonds to the new surety bond forms occurred last year on July 1, 1999. Since that time, this office has received a number of calls from surety companies inquiring about the status of replaced surety instruments. Most surety companies require that the original copy of the bond being replaced be returned to them. It is normally the responsibility of the mine operator, as principal, to ensure this occurs.

Surety companies view the mine reclamation market as high risk due to the long-term nature of the mechanisms. Not having these documents returned to them as they are replaced or expire further extends their liability due to the potential for fraudulent claims. Too many of these "forgotten" bonds may negatively influence a surety company's decision to continue servicing California's mine reclamation market.

Lead agencies may not be aware of this fact and may still be holding original copies of the old surety bonds. We recommend that lead agencies review their files and return any original surety bond documents they may be holding and that have been replaced, to the operator or directly to the surety company. The documents should be sent via certified mail to ensure they have been received by the recipient.

*Andrew Rush,
Environmental Specialist*

Best Management Practices for Reclaiming Surface Mines

Editor's Note: This article is excerpted from Best Management Practices for Reclaiming Surface Mines in Washington and Oregon, Open File Report 96-2 published by Washington State Department of Natural Resources and Oregon State Department of Geology and Mineral Industries.

Maps as Management Tools

Continuing with the theme from Parts 1 and 2 of this article in previous editions of the *SMARA Update*, there are a number of basic elements that should be included on any mining or reclamation map. They include:

Existing Watercourses, Ponds and Wetlands - All streams, rivers, wetlands, and ponds on and adjacent to the site must be indicated on the map. Accurate location of these features allows reviewers to assess potential mining-related impacts and also aids the miner in the design of erosion and storm water control systems to protect water quality.

Streams and rivers are represented by lines that are distinct from those used for haul roads, permit boundaries, and property lines. Ponds, wetlands, and lakes should be labeled and/or patterned to distinguish them from other mine features.

Processing Plant - Proper location of processing facilities makes good use of the topography for screening and noise control – for example, siting the facilities in a low area. The location of the processing facilities can be labeled or a symbol may be used.

Haul Roads - Most roads can be placed to avoid potential problems. Proper location, construction, and drainage of roads can minimize turbid water and slope stability problems. Roads can be shown as lines whose width or line type (dashed, etc.) distinguish them from property lines and permit boundaries.

Soil and Overburden Stockpiles - Soil should be preserved for reclamation. The reclamation sequence map must show where topsoil, subsoil, and overburden will be stored until they are reapplied during reclamation. Soil stockpiles can be indicated by drawing a line around the proposed location, adding a distinctive pattern, and labeling the area “topsoil”, “subsoil”, or “overburden”.

Product Stockpiles and Waste Rock Dumps - Stockpiles of usable rock and waste rock dumps are generally indicated on maps by drawing a line around the proposed location, adding a distinctive pattern, and labeling the area “stockpile” or “waste dump”. Stability and potential erosion problems are criteria to be considered in selecting the location of a stockpile or dump. Site topography will influence these factors.

Interim Watercourses and Ponds - Temporary watercourses and ponds, including settling ponds and drainage ditches to control storm water runoff, should be distinguished from permanent natural features. They may be represented by a unique line or pattern.

Typical Cross Sections – A cross section or profile shows what the mine site would look like if a vertical slice were taken through it. The purpose is to show the slope of the original land surface and reclaimed land surface, the water level of ponds and wetlands, and the types and placement of vegetation. Cross sections are usually taken through the areas that will show the most information. It is generally best if a cross section is drawn so that the vertical and horizontal scales are the same. In some cases, the vertical scale can be exaggerated to accentuate topographic features.

Site Access Map - The site access map can be a copy or tracing of the pertinent part of a road map that clearly shows how to get to the site from the nearest town. The preferred size for this type of map is 8½ x 11 inches. A site access map shows the regional setting of the site and includes nearby geographical features and public road access to the site.

Reader Survey

How are we doing? Please take a few moments to provide feedback on the *SMARA Update* to assist us in evaluating opportunities for continuous improvement of this publication. Please do not confine your remarks to this survey if you have suggestions outside the scope of these questions. A copy of this survey is also available on our web site at <http://www.consrv.ca.gov/omr>. We appreciate your time and remarks!

1. What do you enjoy most about the *SMARA Update*?

2. What do you like least?

3. How does the *SMARA Update* help you with your job?

4. What additional information would you like to have included in the *SMARA Update*?

5. What other mining/reclamation publications do you subscribe to? (Please list)

6. Do these other publications provide you with information superior to that in the *SMARA Update*? If so, what information?

7. Do you prefer to receive the *SMARA Update* as hard copy or would you rather receive it on-line?

The *SMARA Update* is a quarterly publication of the Department of Conservation's Office of Mine Reclamation, 801 K Street, MS 09-06, Sacramento, California 95814, (916) 323-9198. Our web site address is <http://www.consrv.ca.gov/omr>. The purpose of this publication is that of imparting the latest in reclamation tips, as well as changes in legislation or interpretation of existing statutes by court decisions.

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